

**Illinois Health Information Exchange
Legal Task Force
General PHI Workgroup Meeting
January 5, 2011
Meeting Notes**

In Person Attendees

Patricia King, Swedish Covenant Hospital

Office of Health Information Technology

Mark Chudzinski

David Kim

Attended by Phone

Tracey Salinski, Arnstein & Lehr

Melissa January, Dinker & Biddle

Valerie Montague, Ungaretti & Harris

Marcia Mathias, Southern Illinois Healthcare

Patricia King opens the meeting at 10:30AM. Roll was taken. She welcomes the group.

Mark Chudzinski, General Counsel of OHIT, greets the group and thanks them for their participation. Mark states that the meetings are advisory in nature and that there will be no decision concerning procurement or acquisition that will take place. Mark also noted that the notice of the meeting was physically posted at the OHIT offices at the Thompson Center and on the OHIT website in compliance with the Open Meetings Act.

Patricia asked for any comments or amendments to the previous General PHI Meeting Minutes from December 15, 2010. There were none. She then moved to adopt the minutes. Valerie Montague and Melissa January seconded the motion and the minutes were adopted.

Patricia then moved on to highlight some of the issues that were brought up in at the Executive Committee Meeting. In particular, Patricia discussed the worksheet created by the Behavioral Health Workgroup and how that worksheet could be adopted by the General PHI group to guide its efforts.

Mark reported that the Executive Committee has decided that each workgroup was to create a whitepaper examining the legal and policy barriers to the adoption of the HIE. He also stated that while he thought the Behavioral Health Workgroup's worksheet was useful, its usefulness to the General PHI group was limited since the Behavioral Health Workgroup deals with limited and closed number of laws. He also noted a disconnect between HIPAA and Illinois law in relation to General PHI.

Patricia stated that she did not feel that the licensing laws needed to be revised in light of the HIE. She felt that dealing with the Medical Patient Rights Act and the common law were more of a priority.

Patricia next asked the best way to organize to meet the deadlines for the whitepaper.

One member of the group found the worksheet helpful, however, she notice the worksheet discussed consent a lot. She wondered if there was overlap between the General PHI and the Consent Workgroup. Mark explained that the Consent Workgroup is examining on the work that HISPC did in 2007 and to update the work. In 2007, HISPC drafted three model consent forms, but the model forms are not in use.

One member stated that she notice some overlap with the Behavioral Health Workgroup. The member felt that some of the statutes in the Legal Task Force Charter were best left to the Behavioral Health Workgroup.

Mark stated that he will act as a liaison between the workgroups to prevent overlap.

Patricia noted that the assumptions section of the worksheet was useful. She felt the assumption section was important since different assumptions could change the conclusion of the workgroup. Patricia asked if there was someone willing to edit the worksheet for use for the General PHI Workgroup. Mark said that he would send the markup version that the Public Health Workgroup made to the worksheet.

Patricia suggested that a grid of all the relevant statutes be created and then individual members would prepare an analysis of the statute. The group found this to be a good idea. David Kim, OHIT intern, will assist in putting the grid together and provide addition research support. Patricia stated that she will circulate a revised worksheet and grid over the next couple of weeks. Everyone will share in the product.

Mark found the Illinois Hospital Licensing Act relevant to the workgroup. The law states that it is the responsibility of the hospital to protect its patient's medical records. He then asked if the HIE could be considered an agent of a hospital.

Patricia stated that she felt that was an issue of common law agency. Agency law is unusual in the medical setting since most physicians working at a hospital are independent contractors. Patricia pointed out *Gilbert v. Sycamore Municipal Hospital*, stated that whether a doctor is considered an agent of a hospital or not depends on the expectation of the patient. She asked if a hospital retained any liability for data residing in the HIE. She felt that the General PHI group had to deal with the common law more than the other groups.

Mark asked if it would be necessary to codify aspects of the common law in order to provide more stability to the medical practitioners.

The group agreed that Wednesdays were a good time to meet. They set the next meeting time tentatively for January 26, 2011 at 10:30AM. Patricia stated that she would confirm the meeting time with OHIT and send out the notice of the next meeting. Mark thanked the group once again.

Public comments were asked for. There were none.

Patricia adjourned the meeting at 11:03AM.